

Remarks

This amendment responds to the official action of September 18, 2009.

In the official action, the examiner posits interpretations of the claims that are illogical, are not called for by the claim language, and are not consistent with the disclosure. The official action rejects the claims under 35 U.S.C. §112, both paragraphs, and also as anticipated by US 5,277,391 – Haug, only by construing the claims in a manner that is without a proper basis. Applicant requests reconsideration and withdrawal of the rejections.

The claims are definite. The disclosure provides enabling support for the subject matter claimed. The invention claimed as a whole is not found in the cited reference and is not shown to have been obvious.

According to the disclosure, a wall bracket for a shower attachment, has a wall rod that includes a pipe (1) and at least one wall support (two supports 6 being illustrated) that fixes the wall rod at a space in front of a shower wall (in front of a substantially perpendicular surface). At least one mounting bracket (20) is attachable to the wall rod for carrying a shower attachment. The mounting bracket (20) is an extension of the wall rod and continues the wall rod. The mounting bracket (20) curves, up to a cone (22) at its end forming a structure to which the handle of a shower head can be removably held. The shower head is at the end of a hose and the mounting bracket (20) has a slot along the rear side into which the shower hose can be fitted. The hose thus fits in the slot along the rear side of mounting bracket (20). Below the mounting bracket (20), the hose hangs down in the space between the wall rod pipe (1) and the wall supports that space the wall rod from the wall.

The examiner has suggested that there is confusion in the mention of the term "additional" with respect to a hose guide between the wall rod and the wall. The examiner reads the description at page 4, lines 13-15 or paragraph [0018] as published, which plainly describes the guidance of the hose in the space between the wall rod and the pipe, as referring to the additional or further mounting bracket (30),

shown in Fig. 2. The further mounting bracket is not disclosed or suggested to be the element that causes the hose to hang behind the wall rod. One cannot properly question the sufficiency of the disclosure for not explaining how the further mounting bracket (30) accomplishes positioning of the hose. If fact, the further mounting bracket (30) is not described as positioning the hose as described. One cannot properly object to the clarity of the claim language one this point, because neither the claims nor the disclosure support the examiner's suppositions.

More particularly, there is no basis for the examiner to expect or require that the description of the mounting bracket (20) in the description of Fig. 1 be consistent with the description of a different element (30), described elsewhere and shown in a different drawing figure, namely Fig. 2. The conclusions in the official action that the disclosure does not support the claims or that something is inconsistent between the claims and the disclosure is completely unsupported and erroneous.

The additional bracket (30) in Fig. 2 is an alternative point for affixing the shower head handle. Additional bracket (30) is not disclosed to be the same mounting bracket (20) that continues the wall rod as claimed. Additional bracket (30) does not engage with any hose leading to the shower head handle, instead protruding laterally from the wall bar to provide a point at which the shower head handle is removably affixed.

The official action erroneously suggests that the claims and the disclosure are not consistent or that elements of the invention as claimed are not disclosed. There is no basis to assert inconsistency or lack of support. There is likewise no basis to interpret the claims so as to eliminate the requirement for support in the prior art for all the elements recited in any claim that may be rejected for anticipation under 35 U.S.C. §102. The prior art does not meet the invention claimed. The cited reference, US 5,277,391 - Haug does not disclose or suggest a mounting bracket that is an extension of a wall rod, is curved up to an end cone for holding a shower head handle, has a slot along the rear side of the mounting bracket arranged to hold and guide the shower hose to hang between the wall rod and the wall, etc. There is no inconsistency or deficiency in applicant's disclosure about these aspects. The

aspects are positively claimed. There is no basis to reject the claims as anticipated by US 5,277,391 – Haug.

Haug does not disclose or suggest a mounting bracket that is an extension of the wall rod. Haug's holder (4) protrudes laterally and lacks a slotted pipe shape. A lateral protrusion is not an extension.

Haug does not teach or suggest holding or guiding a hose, let alone guiding a hose along a continuation of the wall rod such that the proximal part of the hose hangs down between a wall rod and the wall. Haug's holder for the shower head handle on the front of the wall rod has no bearing on applicant's invention as defined in claim 1. Haug's structural configurations and functions are unlike the subject matter claimed.

And one cannot assert that there is any deficiency in applicant's disclosure to justify ignoring limitations that are expressly claimed. The structure that extends applicant's wall rod and guides applicant's hose is described, for example at page 7, lines 1-9 and paragraphs [0031]-[0032] as published. The mounting bracket (20) extends as an upward continuation of the wall rod, and has a rear slot along pipe piece (21), from the cone at the end of the bracket (20), down along bracket (20). Beyond the bracket (20), the hose hangs freely downwardly, and as the direct result of the claimed aspects, the mounting bracket causes the hose to hang down between the wall rod (pipe 1) and the base plate (7) at the wall. This is not to say that the mounting bracket (20) is itself located behind the wall bar, or to engender any confusion about the positive recitals of the mounting bracket (20) continuing the lengthwise extension of the wall bar, curving up to the mounting point for the shower head handle, and holding the hose in the slot along the rear side of the bracket's length.

The rejection as stated in the official action lacks proper support because the rejection is based on a contrived interpretation positing uncertainty where none exists. Insofar as the comments in the official action raise inconsistent descriptions, these are descriptions of different parts. Of course the descriptions of plainly different parts have their own specific aspects mentioned in the description and such

specific aspects differ from one distinct part to another. There is nothing inconsistent or lacking about the description.

As the claims are understood consistently with the disclosure, the mounting bracket extends the wall rod, i.e., the bracket continues the wall rod endwise. The mounting bracket curves up to the cone for the shower head handle, and contains a hose guiding slot on the rear side. This subject matter is not found or suggested in Haug. The rejection of the claims was unwarranted in the official action because Haug lacks any similar structure.

Applicant furthermore proposes in the present amendment also to recite that the mounting bracket for the shower attachment comprises a lengthwise extension of the wall rod. Applicant proposes to recite that the mounting bracket is formed as a continuation extending the wall rod upwardly. Claim 1 also defines the mounting bracket as curved and comprising a pipe with a cone at an end and an opening along the pipe for the hose. The opening faces toward a rear side of the mounting bracket (not either the rear or a side). The opening forms a slot for removably receiving the outlet hose leading to the cone. These aspects are consistent with the disclosure, are clear and definite. These aspects clearly distinguish over the prior art of record including US 5,277,391 – Haug, and obviate any loose construction of the claim language based on alleged uncertainty as to what is disclosed and claimed.

Applicant proposes in claim 12 to recite where the recited wall support and the mounting bracket guide the hose, namely behind the wall rod and in the space between the wall rod and the perpendicular surface. This aspect is clearly disclosed at page 7, lines 4-9 (paragraph [0031] as published). It is not disclosed or suggested in Haug, and there is no basis to assert from a knowledge of the prior art and an application of routine common sense that one would expect to obtain a beneficial result by wholly reconfiguring the prior art in the manner claimed.

Claim 18 is canceled, thus obviating any basis for the examiner to attempt to interpret the claim to require that the mounting bracket (20) leading up to the cone for the shower head handle, and/or the additional bracket (30) for the shower head

handle, be disposed behind the wall rod, or otherwise to assert confusion where none exists.

The claims are definite. The disclosure is clear and provides enabling support for the subject matter claimed. The invention defined in claim 1 and the claims depending from claim 1 is not disclosed in the prior art, including US 5,277,391 – Haug, which fails to disclose a configuration that even remotely resembles a mounting bracket continuing the length of a wall bar out to a shower head handle holding cone, and guiding the hose from the handle along the back of the mounting bracket, from which the hose can depend downwardly between the wall rod and the wall.

The differences between the invention and the art are such that the subject matter claimed as a whole is not shown to have been known or obvious. Applicant requests reconsideration and allowance of claims 1, 3, 7-17 and 19.

Respectfully submitted,

Date: March 1, 2010

/Stephan Gribok/
Stephan P. Gribok, Reg. No. 29,643
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
tel. 215-979-1283
fax. 215-689-2443
SPGRIBOK@DUANEMORRIS.CO

Docket No. D4700-00425
P 43743 WO/US